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## Emergency Regulation and Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Virginia Board of Education
<b>Virginia Administrative Code (VAC) citation</b>	8 VAC 20 -520
<b>Regulation title</b>	Emergency Regulations Governing Reduction of State Aid When Length of School Term Below 180 Teaching Days or 990 Teaching Hours
<b>Action title</b>	To clarify schedule of makeup days and circumstances in which approval may be granted so that state basic aid funding will not be reduced because of school closings due to severe weather conditions or other emergency situations.
<b>Document preparation date</b>	1/25/2004

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Preamble

*The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The Board of Education promulgated the *Regulations Governing Reduction of State Aid When Length of School Term Below 180 School Days*, 8 VAC 20-520, in response to § 22.1-98 of the Code of Virginia. The most recent amendments to the regulations were effective in 1980. The 2004 Virginia General Assembly passed three bills that amended this section of the Code and made the changes effective from passage of the bills. The bills were HB 1256 (Van Landingham), SB 452 (Whipple), and HB 575 (Hamilton). HB 1256 and SB 452 clarify the schedule of makeup days and circumstances in which approval may be granted so that state basic aid funding will not be reduced because of school closings due to severe weather conditions or other emergency situations. HB 575 permits the Board of Education to waive the requirement that school divisions compensate for school closings resulting from a declared state of emergency.

HB 575 and SB 452 have emergency enactment clauses and are effective upon passage. HB 1256 and SB 452 require the Board of Education to promulgate regulations to implement the provisions to be effective within 280 days of enactment. Therefore, this emergency regulation is required by changes to the Code of Virginia. The regulation is not otherwise exempt under the provisions of § 9-6.14:4.1(C)(4).

### Legal basis

*Other than the emergency authority described above, please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and 2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The Code of Virginia, § 22.1-16, vests the Board of Education with the authority to promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1. Section 22.1-98 of the Code of Virginia prescribes the circumstances under which state aid shall be reduced when the length of the school term falls below 180 days or 990 hours. This code section, as amended by the 2004 General Assembly, requires the Board of Education to promulgate regulations within 280 days of its enactment.

The Office of the Attorney General will certify that the agency has the statutory authority to promulgate the emergency regulation and that it comports with applicable state and/or federal law.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of the emergency regulations and the subsequent permanent regulations is to clarify the schedule of makeup days and circumstances in which a waiver may be granted by the Board of Education so that state basic aid funding will be reduced because of school closings due to severe weather conditions or other emergency situations. The proposed actions also implement the legislation that permits the Board of Education to waive the requirement that school divisions compensate for school closings resulting from a declared state of emergency.

**Substance**

*Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.*

The proposed regulation was approved by the Board of Education on June 23, 2004. The text of the emergency regulation was revised on January 12, 2005, at the request of the Office of the Secretary of Education and others. The following chart details the regulatory changes.

The current regulation has all of the provisions in one section, 8 VAC 20-520-10. This section is being repealed in its entirety. The amendments replace the regulation with language that comports with the changes to the Code of Virginia and separates the requirements into different sections for clarity. The name of the regulation has also been changed to more clearly reflect its intent.

<b>Current section number</b>	<b>Proposed new section number, if applicable</b>	<b>Current requirement</b>	<b>Proposed change and rationale</b>
None.	5	No definitions are provided.	Section 5 provides definitions to clarify the meaning of the regulations.
None.	20	The regulation itself does not state the length of the school year term	Section 20 prescribes the length of the school term in teaching days and teaching hours as prescribed by the Code of Virginia and the <i>Regulations Establishing Standards for Accrediting Public Schools in Virginia</i> , 8 VAC 20-131-150.
10	30	Prescribes how days may be made up	Section 10 is being repealed in its entirety. Section 30 prescribes how days may be made up in accordance with the changes to the Code of Virginia. Also clarifies how school divisions may extend teaching days to make up for lost instructional time.  Language has been changed to clarify that a school division may make up missed teaching days by providing students with additional teaching hours equivalent to such missed teaching

			<p>days. This language coincides with the language in § 22.1-98 of the Code of Virginia. Additionally, language was removed that required that extensions to teaching days be of sufficient length to permit the provision of meaningful instructional services.</p>
10	40	<p>Prescribes the conditions and process for the granting of a waiver.</p>	<p>Section 10 is being repealed in its entirety. Section 40 prescribes the conditions and process for the granting of a waiver in accordance with the changes to the Code of Virginia.</p> <p>Language has been added to state that the Board authorizes the Superintendent of Public Instruction to approve reductions in the school term for a school or the schools in a school division.</p>
10	50	<p>There is no provision regarding funding.</p>	<p>Section 10 is being repealed in its entirety. Section 50 prescribes the conditions that must be met in order not to have a reduction in funding.</p>
	60		<p>A section regarding administration was added at 8VAC20-520-60. It requires the Virginia Department of Education to notify local school divisions annually of the provisions of the regulation and the Virginia Code regarding reductions in the length of the school term. It requires local school division superintendents to certify by April 15 of each school year whether their school term is expected to be less than 180 teaching days or 990 teaching hours and, if so, that the school division has read and complied with the provisions of the regulation and is implementing a plan for making up any missed time that has not been waived in accordance with the regulation.</p>

**Alternatives**

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

There are no alternatives because the amended code section requires the promulgation of Board of Education regulations within 280 days from enactment.

**Family impact**

*Please assess the impact of the emergency regulatory action on the institution of the family and family stability.*

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There should not be any impact on the institution of the family or family stability. The Board of Education has a regulation governing the length of the school year that was last amended in 1980. These revisions are being made to that regulation in order to comport with changes made by the 2004 General Assembly to the Code of Virginia.